EXPLANATORY MEMORANDUM TO

The High Street (Coronavirus, Financial Assistance) Scheme Regulations (Northern Ireland) 2021

2021 No. 268

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under the Financial Assistance Act (Northern Ireland) 2009 ("the Act") and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the High Street (Coronavirus, Financial Assistance) Scheme Regulations (Northern Ireland) 2021 ("the Regulations") is to make a scheme to provide financial assistance to mitigate (through the use of pre-paid cards) the effect of the exceptional circumstances referred to in the determination made by the First Minister and deputy First Minister on 4 August 2021.

3. Background

3.1. The Act enables the making by Northern Ireland departments of schemes for financial assistance in certain circumstances. The Act requires the First Minister and deputy First Minister, acting jointly, to determine if an exceptional circumstance exists; and that it is desirable to provide financial assistance to prevent, control or mitigate any aspect or effect of those circumstances; and that such assistance ought to be provided in accordance with a scheme.

3.2. The Act contains provision for the First Minister and deputy First Minister following such a determination to designate the Department for the Economy to make a scheme by regulations. They made this determination and designation on 4 August 2021. Subsequently, the High Street Scheme ("the Scheme") is being made by the Regulations under these powers.

3.3. The Scheme is part of the Minister's Economic Recovery Action Plan published by the Department for the Economy on 25 February 2021. As part of the Economic Recovery Action Plan, the NI Executive agreed to a ring-fenced funding allocation of £145m for the Scheme on 1 April 2021, and agreed that the Scheme be taken forward under a Ministerial Direction. Minister Dodds sought Executive agreement for the Ministerial Direction and this was subsequently secured on 29 April 2021. Minister Lyons has subsequently confirmed that he is content to continue to implement the Scheme under the Ministerial Direction.

3.4. Since the pandemic started, research has shown that the spending habits of the public have changed and the Scheme aims to reverse the trend of

customer online spend and encourage the public to physically return to and support their local businesses to ensure that they can continue to trade.

3.5. The Scheme will provide every person resident in Northern Ireland, aged 18 and over on 25 October 2021, who applies for the Scheme, with a Spend Local pre-paid card worth £100. The card can then be used in local businesses throughout Northern Ireland, but cannot be used for online purchases, gambling or for certain financial and legal purposes. The full list of exclusions is contained in the Regulations. Prisoners, or those on remand, are not eligible for the Scheme.

3.6. The Scheme will commence with an application period beginning on 27 September 2021 and ending on 25 October 2021.

3.7. Paragraphs 4, 5 and 6 set out the eligibilty criteria, application process and opportunity to have the decision reviewed. A person can apply and the Department will consider their application against the eligibility criteria by checking a number of data sources set out in the determination made under paragraph 4, and if successful, a card will be issued. Embossed cards will be issued to the visually impaired. Where an applicant's data cannot be confirmed following three tiers of automatic verification checks, they will be informed that they need to supply further information to enable a manual verification of their eligibility. Applicants will be provided with an opportunity to appeal the decision if rejected following the completion of the manual verification check. Full details have been published on the Departmental website.

3.8. The card can be spent once activated any time after 27 September 2021 until 30 November 2021.

3.9. The the spend period can changed by the Department to terminate it early, extend it or suspend and reactivate it. Where any of these things are done the Department must give notice to person likely to be affected by it.

3.10. The £100 will be disregarded for the purposes of social security benefits.

4. Consultation

4.1. It was not considered necessary to carry out any formal consultation. The proposed Regulations are based on a commitment by the Executive, which has recognised and mandated the need for a substantial economic stimulus to aid Northern Ireland's economic recovery. Although there was no formal consultation process, throughout the policy development engagement has taken place with a number of groups representing businesses such as the Federation of Small Businesses and local Chambers of Commerce. The policy team also consulted with representatives of disability awareness groups, and with public bodies whose functions will be affected. In accordance with Article 36(4) of the General Data Protection Regulation, the Information Commissioner's Office has been consulted.

5. Equality Impact

5.1. Equality screening was carried out in compliance with section 75 of the Northern Ireland Act 1998 and the policy was screened out. This has been published on the Departmental website.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment has been prepared and is attached and will be published on the Departmental website. This has been informed by a Rural Needs Impact Assessment and Small and Micro Business Impact Test, both published on the Departmental website.

6.2. A Data Protection Impact Assessment has been completed following consultation with the Information Commissioner's Office.

7. Financial Implications

7.1. The Executive agreed a funding allocation of £145m to support the Scheme delivery. A revised Ministerial Direction is in place to cover any potential overspend. Any additional resource would be made available from the Economic Recovery Action Plan funding allocated to DfE at the beginning of this financial year.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998. In particular it has considered the exclusion of prisoners and those on remand from the Scheme as well as the fact that 16 and 17 year olds will not be eligible to apply. It is satisfied that the Rules are not incompatible with the Convention rights, are not incompatible with EU law, do not discriminate against a person or class of person on the grounds of religious belief or political opinion; and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. The Department for Economy will publish information in relation to the Scheme to demonstrate compliance with the subsidy control chapter of the UK-EU Trade and Cooperation Agreement (TCA). This transparency notice will confirm the Department is providing a subsidy to economic actors, as defined in TCA Article 363, that the Scheme falls within the scope of Article 364(3) and meets all of the subsidy principles set out in Article 366, which are now binding under domestic law by virtue of section 29 of the European Union (Future Relationship) Act 2020. As the Scheme is within the scope of Article 364(3) (subsidies that are granted on a temporary basis to respond to a national or global economic emergency), Article 367 (prohibited subsidies and subsidies subject to controls) does not apply. Finally, the Department confirms it will ensure compliance with Article 368 (Use of subsidies) and will meet its transparency commitments as detailed in Article 369.

10. Parity or Replicatory Measure

10.1. Not applicable.

11. Additional Information

11.1. The Department will breach the 21-Day Rule.

11.2. The Scheme is moving at pace attempting to mitigate the effects of the coronavirus pandemic on the high street, and this requires the Scheme to be delivered as soon as is practical.

11.3. Having the Scheme operational in the autumn before the Christmas period has been considered (by internal analysis and stakeholder feedback) as the time when it would be most impactful, hence the time constraint on delivery.

11.4. With an end date of 30 November 2021, to meet this objective and to give applicants sufficient time to utilise their card, and for a reasonable application period as required to ensure the pre-paid cards can be printed and sent to all 1.5m applicants, the application portal must open no later than 27 September 2021. Therefore, the legislation must be operational by 24 September 2021.

11.5. As the Financial Services (Northern Ireland) Act 2009 also requires TEO approval of the final Statutory Rule, the timescale to ensure the deadline can be achieved following all requisite legislative processes required, means the Statutory Rule be made and laid as soon as is practicable. This will not allow the full 21-day period for scrutiny.